

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Teecie Dove	Team: Squad #2	CCRB Case #: 202000911	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 01/30/2020 1:30 AM	Location of Incident: 5th Avenue and East 132nd Street	Precinct: 25	18 Mo. SOL 7/30/2021	EO SOL 3/16/2022	
Date/Time CV Reported Sun, 02/02/2020 6:58 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sun, 02/02/2020 6:58 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. DT3 Joel Ayala	02912	954509	GVSD Z2
3. PO Daniel Vargas	04865	957244	GVSD Z2
4. SGT Amadeo Oktrova	00000	949413	PBBX SU
5. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Joseph Spina	06037	953436	WARRSEC
2. LT CD Michael Raso	00000	933235	F S S
3. DT3 Steven Cruver	02950	950250	WARRSEC
4. DT3 Sean Kern	03332	955000	GVSD Z2
5. DT3 Ryan Stigell	01218	951302	WARRSEC

Officer(s)	Allegation	Investigator Recommendation
A.SGT Amadeo Oktrova	Abuse: Sergeant Amadeo Oktrova stopped § 87(2)(b)	
B.PO Daniel Vargas	Abuse: Police Officer Daniel Vargas stopped § 87(2)(b)	
C.DT3 Joel Ayala	Abuse: Detective Joel Ayala stopped § 87(2)(b)	
D. An officer	Abuse: An officer threatened § 87(2)(b) with the use of force.	
E. Officers	Force: Officers used physical force against § 87(2)(b)	
F.SGT Amadeo Oktrova	Abuse: Sergeant Amadeo Oktrova frisked § 87(2)(b)	
G. An officer	Abuse: An officer threatened to arrest an individual.	
H. An officer	Abuse: An officer searched § 87(2)(b)	
I. Officers	Abuse: Officers threatened to arrest § 87(2)(b)	
J.SGT Amadeo Oktrova	Abuse: Sergeant Amadeo Oktrova failed to provide § 87(2)(b) with a business card.	

Case Summary

§ 87(2)(b) filed this complaint via the CCRB's website on February 2nd, 2020, on behalf of her son, § 87(2)(b). This case was originally assigned to Investigator Santosh Prakash. It was reassigned to Investigator Donntice Dove on November 26th, 2021.

On January 30th, 2020, at approximately 1:30 AM, § 87(2)(b) stood at the southwest corner of East 132nd Street and 5th Avenue in Manhattan with a friend whose name he could only provide as "§ 87(2)(b)" while he awaited a cab. One unmarked police vehicle, containing Sergeant Amadeo Oktrova, Police Officer Daniel Vargas, and Detective Joel Ayala of the SRG City-wide Anti-crime Squad, and at least one other unmarked police vehicle pulled up and at least three officers exited and approached § 87(2)(b). § 87(2)(b) took flight and the officers pursued him (**Allegations A, B, C: Abuse of Authority—Stop**, § 87(2)(g)). An unidentified officer allegedly shouted, "You better stop before we shoot you" (**Allegation D: Abuse of Authority—Threat of Force**, § 87(2)(g)). § 87(2)(b) crossed the street and ran into a § 87(2)(b) courtyard, where the officers caught up to him.

An unidentified officer allegedly brought § 87(2)(b) to the ground and put his knee on § 87(2)(b)'s back (**Allegation E: Physical Force**, § 87(2)(g)). § 87(2)(b) was handcuffed and frisked by an unidentified officer (**Allegation F: Abuse of Authority—Frisk**, § 87(2)(g)). § 87(2)(b)'s friend "§ 87(2)(b)" allegedly witnessed this, and an unidentified officer allegedly threatened to arrest "§ 87(2)(b)" if he did not leave the scene (**Allegation G: Abuse of Authority—Threat of Arrest**, § 87(2)(g)). Officers questioned § 87(2)(b) about weapons in the neighborhood, and an unidentified officer allegedly reached into § 87(2)(b)'s pocket and retrieved his ID from his wallet (**Allegation H: Abuse of Authority—Search (of person)**, § 87(2)(g)). § 87(2)(b) struggled to stay upright, and unidentified officers allegedly told § 87(2)(b) that he would be arrested if he did not stand upright or answer their questions (**Allegation I: Abuse of Authority—Threat of Arrest**, § 87(2)(g)). § 87(2)(b) was released without a summons, but he did not receive a business card (**Allegation J: Abuse of Authority—Failure to Provide RTKA Card**, § 87(2)(g)).

No video evidence was received for this incident. An initial request for BWC footage based on the incident date, location, and time, was returned by NYPD Legal with negative results (**Board Review 17**). Once the possible command of the subject officers was determined to be the SRG City-wide Anti-crime Unit, 2 subsequent BWC requests were submitted for all officers listed on the command's roll calls for January 29, 2020, and January 30, 2020, both of which also returned negative results (**BR 18 and 19**). Once the Stop Report (**BR 06**), which provided the specific serial number of the BWC that Police Officer Vargas shot video of this incident on, a fourth BWC request with this information was submitted to NYPD Legal. At this point a response was received stating that the relevant video footage was no longer available due to Axon's Retention Policy (**BR 20**).

In addition to difficulties in obtaining BWC footage, the investigation experienced delays in identifying the subject officers due to the unusual nature of their assignment. An examination of documents from PSA 5, PBMN Anti-crime, and the 25th Precinct initially determined that the subject officers could not be identified (**BR 35**). Upon the case's reassignment in November of 2021, a further examination of the evidence was conducted, and it was concluded that the subject officers were potentially of the SRG City-wide Anti-crime unit. Sergeant Oktrova, Detective Ayala, and Police Officer Vargas, along with five other officers, were identified as potential subject officers upon receipt of the SRG City-wide Anti-crime Roll Call on December 27, 2021 (**BR 22**). These officers were confirmed to be subject officers based on Detective Ayala's and Police Officer Vargas' memo books (**BR 23**), as well as the Stop Report (**BR 06**) prepared by Police Officer

Vargas confirming Sergeant Oktrova's involvement, received on January 13th, 2022. After multiple attempts to schedule the subject officers for interviews during a two-month period between January 18th, 2022, and March 08th, 2022, during which Sergeant Oktrova, Detective Ayala, and Police Officer Vargas each had three missed interview appointments (**BR 28, 29, 30, 31, 32, 33, and 34**), the last subject officer was interviewed on March 8th, 2022 (**BR 04**), nine days prior to the statute of limitations date for this case. Given these delays in identifying and interviewing the subject officers, the investigation was unable to conclude prior to the statute of limitations expiring.

Findings and Recommendations

Allegation (A) Abuse of Authority: Sergeant Amadeo Oktrova stopped § 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Daniel Vargas stopped § 87(2)(b)

Allegation (C) Abuse of Authority: Detective Joel Ayala stopped § 87(2)(b)

Allegation (F) Abuse of Authority: Sergeant Amadeo Oktrova frisked § 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on February 26th, 2020 (**BR 01**). Detective Ayala was interviewed on February 17th, 2022 (**BR 02**). Police Officer Vargas was interviewed on February 25th, 2022 (**BR 03**). Sergeant Oktrova was interviewed on March 8th, 2022 (**BR 04**). The investigation was unable to obtain a statement from § 87(2)(b)'s friend § 87(2)(b) (**BR 05**).

It is undisputed that, at approximately 1:30 AM on January 30th, 2020, § 87(2)(b) was standing on a 5th Avenue sidewalk near § 87(2)(b) when at least two unmarked police vehicles approached. § 87(2)(b) took flight and multiple officers pursued him on foot. § 87(2)(b) crossed into a courtyard in § 87(2)(b) where officers caught up to him. § 87(2)(b) was frisked for weapons.

§ 87(2)(b) stated that he was standing with his friend, whose name he could only provide as "§ 87(2)(b)" while waiting for a taxi, when three officers exited their vehicle and began running toward him without telling him to stop or issuing any order. § 87(2)(b) did not know why these officers initially approached him. § 87(2)(b) ran away, and the officers pursued him. § 87(2)(b) crossed the street and ran into § 87(2)(b) where two officers apprehended him. Here, these two officers rear-cuffed § 87(2)(b) and patted down the full length of § 87(2)(b)'s outer clothing. The officers then informed § 87(2)(b) that they were looking for weapons. The third officer who was chasing § 87(2)(b) arrived on the scene minutes later.

A Stop Report prepared by Police Officer Vargas and approved by Sergeant Oktrova (Board Review 06), states that the officers observed an individual, identified by the investigation as § 87(2)(b) with a group of males, holding his waistband and looking around repeatedly. Upon seeing the officers, § 87(2)(b) broke away from the group he was with and stated to walk away quickly with his hand still on his waistband while looking back at the officers. When the officers exited their vehicle, § 87(2)(b) began to run away. While running, § 87(2)(b) kept his hand in his waistband. The report notes that § 87(2)(b) was stopped on the suspicion of criminal possession of a weapon and the factors that led to the stop were "concealing or possessing a weapon." It notes that he was handcuffed and frisked and that the basis of the frisk was "object observed suspected of being a weapon." The report notes that a business card was offered to § 87(2)(b) but he refused it. The report states that § 87(2)(b) was not searched. The report was prepared by Police Officer Vargas and identifies Sergeant Oktrova as both the immediate supervisor and the approver. It notes that Sergeant Oktrova was on scene during the incident, reviewed the encounter with the officers involved, confirmed that the report was accurate and complete, and that he believed there was sufficient basis for both the stop and the frisk.

A Warrant Audit of all searches conducted by officers for § 87(2)(b) revealed that Detective Ayala conducted a search for § 87(2)(b) at 1:59 a.m. on the incident date (BR 21).

The testimonies of Detective Ayala, Police Officer Vargas, and Sergeant Oktrova were largely consistent. All three officers stated that they were on routine patrol on the night of the incident when they first noticed § 87(2)(b) standing on the sidewalk amongst a group of men. § 87(2)(b) was clutching his waistband and looking around, and when he saw the officers, he took flight. These factors combined with what the officers knew about the area—that it was a high-crime area with multiple recent shootings—alerted the officers to the possibility that § 87(2)(b) could have had a weapon. None of the officers recalled whether they saw an object in § 87(2)(b)'s waistband, and they did not recall seeing an object that resembled a weapon.

Sergeant Oktrova stated that he was in a vehicle with Detective Ayala and Police Officer Vargas, and that another unmarked police vehicle from the same unit was behind them. Sergeant Oktrova did not recall which officers were in the second vehicle. Sergeant Oktrova pursued § 87(2)(b) on foot, along with the officers in the other vehicle. Police Officer Vargas was unsure whether he pursued § 87(2)(b) on foot. Detective Ayala stated that he remained in the vehicle and drove to catch up with § 87(2)(b).

Sergeant Oktrova trailed behind the officers who pursued § 87(2)(b) and did not catch up with them for one-to-two minutes. During this time, Sergeant Oktrova conducted an evidence sweep, where he searched the surrounding area for weapons in case § 87(2)(b) discarded a weapon on his run. This evidence sweep yielded no results. Sergeant Oktrova did not recall whether he was present when § 87(2)(b) was frisked and he did not recall if § 87(2)(b) was already handcuffed when he caught up to he and the other officers. Neither Detective Ayala nor Police Officer Vargas recalled whether § 87(2)(b) was handcuffed, nor which officer handcuffed him. Neither officer recalled which officer frisked § 87(2)(b). All three officers stated that, following the frisk, it was confirmed that § 87(2)(b) did not possess a weapon.

While, as described above, the Stop Report identified the basis of the frisk as, “object observed suspected of being a weapon.” None of the three officers recalled seeing any such object, and none of them was able to provide a description of said object.

Per People v. De Bour, 40 NY2d 210 [1976] (BR 07), to initiate a stop officers must possess reasonable suspicion that the individual has committed a crime. This reasonable suspicion must include “specific,” “concrete,” and “articulable” observations made by said officer. Without these factors, an officer possesses founded suspicion at best and cannot restrict an individual’s movements. In order to frisk an individual, officers must have a reasonable suspicion that the individual is armed. In People v. Clermont, 133 A.D.3d 612 [2015] (BR 08), the court established that a suspect’s flight, even when combined with an officer’s knowledge of criminality in the area, is not enough to elevate a Level 2 inquiry to a Level 3 stop, and therefore does not justify the officer’s pursuit of the suspect. However, a suspect’s flight combined with specific factors that indicate said suspect’s criminality may rise to the level of reasonable suspicion. These factors must be articulable and directly relevant to the suspect. A suspect clutching or adjusting their waistband is not a sufficient factor to determine reasonable suspicion.

People v. Prochilo, 41 NY2d 759 [1977] (BR 09) states that, to justify a frisk, an officer must be able to effectively articulate “proof of a describable object or of describable conduct which provided a reasonable belief that an individual possessed a gun...” This “describable conduct” cannot consist solely of a suspect’s innocuous behavior that could have an innocent explanation, such as an individual clutching their waistband. People v. White, 159 AD3d 741 [2018] (BR 10).

§ 87(2)(b), § 87(2)(g)

Allegation (D) Abuse of Authority: An officer threatened § 87(2)(b) with the use of force.

Allegation (E) Force: Officers used physical force against § 87(2)(b)

Allegation (G) Abuse of Authority: An officer threatened to arrest an individual.

Allegation (H) Abuse of Authority: An officer searched § 87(2)(b)

Allegation (I) Abuse of Authority: Officers threatened to arrest § 87(2)(b)

§ 87(2)(b) stated that, as he was running, an officer behind him yelled, “You better stop before we shoot you.” § 87(2)(b) crossed into a § 87(2)(b) courtyard and heard another officer say, “I’m going to get you.” At this point, § 87(2)(b) decided to stop and surrender. After he came to a stop, an officer pushed § 87(2)(b) s back and took him to the ground, causing § 87(2)(b) to land on his face. One officer placed his knee on § 87(2)(b) s back while the officers handcuffed and frisked him. While he was on the ground being cuffed, § 87(2)(b) could hear and see (peripherally) his friend, § 87(2)(b) observing the interaction from a distance. § 87(2)(b) heard one of the officers tell § 87(2)(b) to leave the scene or he would be arrested. Following the frisk, § 87(2)(b) was stood upright and pushed against the front of an unmarked police vehicle. Sergeant Oktrova arrived on the scene and walked § 87(2)(b) from the front of the vehicle to the back of the vehicle, where § 87(2)(b) was questioned. At some point during this questioning, an officer reached into § 87(2)(b) s back pocket without warning and removed § 87(2)(b) s wallet, where the officer obtained § 87(2)(b) s ID. As the officers questioned § 87(2)(b) an officer stated that § 87(2)(b) would be “locked up” if he did not provide names. § 87(2)(b) was having trouble standing upright, and he told the officers that he had asthma and felt nauseous. An officer told § 87(2)(b) that, if he failed to keep his head up, he would be taken to jail.

Detective Ayala stated that neither he nor Detective Vargas said anything to § 87(2)(b) before § 87(2)(b) took flight. Detective Vargas and Sergeant Oktrova were unsure if they articulated any command to § 87(2)(b) as they pursued him, or if any other officer did this. Neither Detective Ayala, Sergeant Oktrova, nor Police Officer Vargas threatened to shoot § 87(2)(b) as they pursued him, and none of them recalled any other officer threatening to shoot § 87(2)(b)

Sergeant Oktrova stated that § 87(2)(b) was already apprehended at the point that he caught up to him, and § 87(2)(b) was standing upright when Sergeant Oktrova arrived. Sergeant Oktrova did not witness § 87(2)(b) being taken to the ground, nor did he witness an officer place a knee against § 87(2)(b) s back. Neither Detective Ayala nor Police Officer Vargas recalled § 87(2)(b) ever being taken to the ground. Neither officer recalled an officer placing his knee against § 87(2)(b) s back. Sergeant Oktrova stated that he did not recall placing § 87(2)(b) against a police vehicle in any way, and neither Detective Ayala nor Police Officer Vargas recalled witnessing an officer do this. None them recalled reaching into § 87(2)(b) s pocket to retrieve his ID. None of the officers recalled any officer threatening to arrest § 87(2)(b) or a bystander.

The Memo Books of all officers who were on the SRG City-wide Anti-crime Roll Calls on January 29, 2020, and January 30, 2020 (BR 22) were requested (BR 23, 24, 25, 26, and 27). Of these

officers, only Police Officer Vargas and Detective Ayala had entries matching this incident (Sergeant Oktrova stated that he had lost his memo book in the interim and filed a UF61 Report in regard to the lost memo book).

Sergeant Oktrova, Police Officer Vargas, and Detective Ayala, who were together in one vehicle, were the only officers identified via the relevant NYPD documents in connection with this incident and none of them could identify the other officers who were present for this incident. The

§ 87(2)(b), § 87(2)(g)

Allegation (J) Abuse of Authority: Sergeant Amadeo Oktrova failed to provide § 87(2)(b) with a business card.

It is undisputed that officers did not provide § 87(2)(b) with a business card. Sergeant Oktrova and Police Officer Vargas stated that they offered § 87(2)(b) a business card, but that he refused. This is documented in the stop report (**BR 06**), where it states that a business card was offered, but “no business card [was] given due to refusal.”

§ 87(2)(b), § 87(2)(g)

Civilian & CCRB History

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**BR 12**).
- § 87(2)(b)
- Police Officer Vargas has been a member-of-service for 7 years and has been a subject in five other CCRB complaints and nine other allegations, none of which were substantiated. § 87(2)(g)
- Sergeant Oktrova has been a member-of-service for 11 years and has been a subject in 12 other CCRB complaints and 28 other allegations, none of which were substantiated. § 87(2)(g)
- Detective Ayala has been a member of service for 8 years and has been a subject in 12 other CCRB complaints and 43 other allegations, of which seven were substantiated in two cases:
 - In case # 201605007 a stop allegation was substantiated against Detective Ayala. The Board recommended formalized training and the NYPD imposed formalized training.
 - In case # 201607995 three vehicle stop allegations and three vehicle search allegations were substantiated against Detective Ayala. The Board recommended formalized training and the NYPD imposed no penalty.

Mediation, Civil, and Criminal Histories

- § 87(2)(b) declined to resolve this complaint via mediation.
- As of December 10th, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed regarding this incident (**BR 14**).
- According to the Office of Court Administration, § 87(2)(b) has not been convicted of any crimes in New York City (**BR 15**).

- According to the Office of Court Administration, § 87(2)(b) has not been convicted of any crimes in New York City (**BR 16**).
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Squad No.: 02



Investigator:	<u>Donntice Dove</u>	<u>03/16/2022</u>
	Signature	Date

Squad Leader:	<u>Alexander Opoku-Agyemang</u>	<u>IM Alexander Opoku-Agyemang</u>	<u>3/16/2022</u>
	Signature	Print Title & Name	Date